

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES of AMERICA

v.

HERIBERTO RODRIGUEZ,

Defendant.

**Criminal No.
05-40006-FDS**

ORDER OF EXCLUDABLE TIME

SAYLOR, J.

At the status conference on May 26, 2006, the Court set trial for October 16, 2006, with a pretrial conference to be held on October 11, 2006. The Court allowed the exclusion of time from May 26, 2006, through October 11, 2006, in the interest of justice for the reasons stated in open court.

On September 11, 2006, defendant filed an assented-to motion to continue the trial and to exclude additional time. As reasons therefor, defense counsel stated that the parties were attempting to resolve the case by a plea; that counsel needed to conduct a further investigation into defendant's criminal record; and that there were issues raised by the pre-plea pre-sentence report that needed to be addressed with probation. To accommodate defendant's request, the trial was continued to an undetermined date. The Order of Excludable Time issued by this Court on September 15, 2006, did not provide a date upon which the speedy trial clock would resume.

At the status conference on November 15, 2006, defense counsel indicated that plea negotiations were ongoing. Defendant has filed motions in state court seeking to vacate certain prior convictions that may affect his classification as an Armed Career Criminal. He is awaiting

rulings on these motions, the outcome of which will affect his willingness to enter into a plea agreement. Defense counsel requested an exclusion of time under the Speedy Trial Act while the motions are pending. A status conference is presently set for January 5, 2007.

With the assent of the parties, this Court has determined that the ends of justice served by allowing the above-mentioned delays outweigh the interest of the public and the defendant in a speedy trial. Therefore, the periods of time from May 26, 2006, through October 11, 2006, from October 16, 2006, through November 15, 2006, and from November 15, 2006, through January 5, 2007, shall be excludable under the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(8)(A).

So Ordered.

/s/ F. Dennis Saylor IV
F. Dennis Saylor IV
United States District Judge

Dated: November 22, 2006